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 CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

UNITED STATES DISTRICT COURT FOR THE
 CENTRAL DISTRICT OF CALIFORNIA

KEVIN HIGHSMITH,

Plaintiff,

v.

LIDIA MARQUEZ, in her individual
 capacity; JOSE ARROYO, in her
 individual capacity; RUDY ESPARZA,
 in his individual capacity; FRANK
 GARCIA, in his individual capacity;
 CHRISTOPHER GEIWITZ, in his
 individual capacity; SGT. JOE LOPEZ,
 in his individual capacity; STANDISH
 BERRY in his individual capacity;
 CARLOS MANCILLA in his individual
 capacity; ROBERT PRATT in his
 individual capacity; J. CURIEL, in his
 individual capacity, and DOES I through
 X, inclusive,

Defendants.

Case No. CV-00039 SVW (CTX)

COMPLAINT FOR VIOLATION OF
 CIVIL RIGHTS

Plaintiff alleges:

JURISDICTION AND VENUE

1. This action arises under the United States Constitution and the Civil Rights Act of 1871 [42 U.S.C. Section 1983] and pendant state claims as hereinafter more fully appears. This court has jurisdiction under and by virtue of 28 U.S.C. Section 1343 and 1331.

2. Venue is founded in this judicial district upon 28 U.S.C. Section 1391(b)

1 and (c) as the acts complained of arose in this district.

2 **PARTIES**

3 3. At all times herein mentioned, plaintiff, Kevin Highsmith ("Highsmith")
4 was, and now is, a citizen of the United States, and resides in the State of California.
5 At the time of the incident described herein, Highsmith was an inmate in the
6 California Department of Corrections being held at California State Prison, Los
7 Angeles County, in Lancaster California at all relevant times mentioned herein.

8 4. At all times herein mentioned, defendant, Correctional Officer Lidia
9 Marquez (Badge No. 67891), was duly appointed and acting as a correctional officer,
10 acting under color of state law at California State Prison, Los Angeles. She is sued in
11 her individual capacity and was at all material times acting under color of State law
12 and as the employee, agent and representative of every other defendant.

13 5. At all times herein mentioned, defendant, Correctional Officer Jose
14 Arroyo (Badge No. 60749), was duly appointed and acting as a correctional officer,
15 acting under color of state law at California State Prison, Los Angeles. He is sued in
16 his individual capacity and was at all material times acting under color of State law
17 and as the employee, agent and representative of every other defendant.

18 6. At all times herein mentioned, defendant, Correctional Officer Rudy
19 Esparza (Badge No. 60132), was duly appointed and acting as a correctional officer,
20 acting under color of state law at California State Prison, Los Angeles. He is sued in
21 his individual capacity and was at all material times acting under color of State law
22 and as the employee, agent and representative of every other defendant.

23 7. At all times herein mentioned, defendant, Correctional Officer Frank
24 Garcia (Badge No. 51880), was duly appointed and acting as a correctional officer,
25 acting under color of state law at California State Prison, Los Angeles. He is sued in
26 his individual capacity and was at all material times acting under color of State law
27 and as the employee, agent and representative of every other defendant.

28 8. At all times herein mentioned, defendant, Correctional Officer

1 Christopher. Geiwitz (Badge No. 61985), was duly appointed and acting as a
2 correctional officer, acting under color of state law at California State Prison, Los
3 Angeles. He is sued in his individual capacity and was at all material times acting
4 under color of State law and as the employee, agent and representative of every other
5 defendant.

6 9. At all times herein mentioned, defendant, Correctional Officer Sgt. Joe
7 Lopez (Badge No. 62067), was duly appointed and acting as a correctional officer,
8 acting under color of state law at California State Prison, Los Angeles. He is sued in
9 his individual capacity and was at all material times acting under color of State law
10 and as the employee, agent and representative of every other defendant.

11 10. At all times herein mentioned, defendant, Correctional Officer Standish
12 Berry (Badge No. 67161), was duly appointed and acting as a correctional officer,
13 acting under color of state law at California State Prison, Los Angeles. He is sued in
14 his individual capacity and was at all material times acting under color of State law
15 and as the employee, agent and representative of every other defendant.

16 11. At all times herein mentioned, defendant, Correctional Officer Carlos
17 Mancilla (Badge No. 49786), was duly appointed and acting as a correctional officer,
18 acting under color of state law at California State Prison, Los Angeles. He is sued in
19 his individual capacity and was at all material times acting under color of State law
20 and as the employee, agent and representative of every other defendant.

21 12. At all times herein mentioned, defendant, Correctional Officer Robert
22 Pratt (Badge No. 63550), was duly appointed and acting as a correctional officer,
23 acting under color of state law at California State Prison, Los Angeles. He is sued in
24 his individual capacity and was at all material times acting under color of State law
25 and as the employee, agent and representative of every other defendant.

26 13. At all times herein mentioned, defendant, Correctional Officer J. Curiel,
27 was duly appointed and acting as a correctional officer, acting under color of state
28 law at California State Prison, Los Angeles. He is sued in his individual capacity and

1 was at all material times acting under color of State law and as the employee, agent
2 and representative of every other defendant.

3 14. At all times herein mentioned, defendants, Does I through X were duly
4 appointed and acting as agents of the State of California employed as such by the
5 California Department of Corrections or contracting with that agency and were at all
6 material times acting under color of State law and as the employee, agent and
7 representative of every other defendant. These DOES are sued in their individual
8 capacity.

9 15. The true names or capacities of defendants, Does I through X are
10 unknown to plaintiff who therefore sues such defendants by such fictitious names.
11 Each of the defendant Does is responsible in some manner for the events herein
12 referred to, and caused injuries and damages proximately thereby to plaintiff, as
13 herein alleged. Plaintiff will amend this complaint to insert the true names and
14 capacities of the fictitiously named defendants when ascertained.

15 **FACTUAL ALLEGATIONS**

16 16. On June 6, 2007, Plaintiff, an inmate in the California State Prison Los
17 Angeles, was lying on his bunk (17 Low, in D-Yard Gym) adjusting his clothing
18 while most of the other inmates were recreating outside the D-Yard Gym. At this
19 time defendant Marquez observed this conduct and knowingly falsely accused the
20 Plaintiff of engaging in sexual misconduct toward her. Marquez notified defendant
21 Geiwitz of the false allegation of sexual misconduct toward her and he (Geiwitz)
22 approached Plaintiff and handcuffed him, on information and belief, knowing that the
23 allegations were false. With the knowledge of Geiwitz (on information and belief),
24 Defendants Arroyo and Esparza took Plaintiff to a secluded rotunda area out of view
25 of other officers and inmates and out of view of all video surveillance cameras. They
26 were joined by defendants Garcia and Pratt. During these times Plaintiff was beaten,
27 kicked and thrown to the ground by these defendants in retaliation for the false
28 allegations made by Marquez. On information and belief, Arroyo and Esparza

1 initiated in the excessive use of force against Plaintiff, while Garcia and Pratt joined
2 in by helping to hold Plaintiff while excessive force was used against him or
3 watching out while the officers improperly used the force against him. Either way,
4 Garcia and Pratt participated in the excessive use of force. Defendants Berry and
5 Mancilla came upon the scene and witnessed the excessive use of force, and on
6 information and belief participated in the covering up of the misconduct by the other
7 guards.

8 17. During this time, the D-Yard Program Sergeant, defendant Lopez was
9 notified of what was occurring and participated in the "informal" discipline and
10 punishment of Plaintiff. Defendant Lopez engaged in the investigation of th incident
11 and, on information and belief, knew that the wrong had occurred, yet he also
12 participated in covering up the misconduct. The defendant correctional officers, in
13 using the force against Plaintiff did so actively, through a conspiracy or tacit
14 agreement of a code of silence, or through a custom and practice of covering for one
15 another and meting out informal discipline which amounted to cruel and unusual
16 punishment. The force and punishment was applied maliciously and sadistically for
17 the very purpose of causing harm and engaging in unlawful and unjustified
18 punishment of Plaintiff. Thereafter, claimant was denied appropriate medical
19 treatment for his injuries.

20 18. Notwithstanding the fact that plaintiff was the victim of illegal
21 punishment and illegal application of force, the officers, as a pretext claimed that he
22 was engaged in illegal "sexual" activity to embarrass him and to ensure that he not
23 come forward with the complaint. Additionally, the officers falsely claimed that
24 Plaintiff had resisted and used force against the officers. This was a pretext designed
25 to discourage Plaintiff from telling the truth and to cover their own misconduct.
26 Further, Plaintiff was the subject of disciplinary and criminal prosecution for the
27 alleged sexual misconduct and for using force or violence against the officers. Those
28 charges of sexual misconduct and use of force or violence against the officer

1 defendants were dismissed against Plaintiff in the court. Any verdict in this case
2 would not be inconsistent with and state court judgment in the criminal case. Plaintiff
3 was punished by placement in administrative segregation and deprived of credits
4 toward his release as a result of the fabrications made by the officer defendants. All
5 of the defendants conspired either overtly or discretely to deprive Plaintiff of his
6 rights by committing the misconduct identified herein.

7 19. By reason of the afore described acts of defendants, plaintiff suffered
8 punitive additional time in custody, physical injuries, pain and suffering, emotional
9 distress, and was otherwise injured, subjected to humiliation and indignities, and
10 suffered physical, mental and emotional pain and suffering all to his damage in an
11 amount to be ascertained.

12 20. Defendants, and each of them, knew or should have known that the
13 placement of Plaintiff in disciplinary housing was only a pretext to cover up their
14 illegal actions. The discipline imposed on plaintiff was unjustified and imposed to
15 discredit the plaintiff and prevent him from pursuing any claim.

16 21. Defendants, and each of them, knew or should have known that the
17 placement of Plaintiff in disciplinary housing was only a pretext to cover up their
18 illegal actions. The discipline imposed on plaintiff was unjustified and imposed to
19 discredit the plaintiff and prevent him from pursuing any claim.

20 22. Plaintiff did not consent to this conduct but protested until he was
21 overcome by the defendants unlawful punishment and use of force. The unlawful
22 punishment and use of force upon plaintiff was cruel, unusual, unjustified,
23 unreasonable, excessive and beyond any need the officers knew they had.

24 23. The aforementioned acts of defendants, and each of them, were willful,
25 reckless, malicious, oppressive, and with callous indifference to and with reckless
26 disregard to plaintiff's rights, and thus, justify awarding of exemplary and punitive
27 damages in an amount to be ascertained according to proof at the time of trial.

28 24. Plaintiff exhausted his administrative remedies by filing the necessary

1 documentation with the CDC in order to process his appeals and complaints.
2 Alternatively and additionally, during the course of his processing of his
3 administrative remedies, Plaintiff's attempts to exhaust his administrative remedies
4 was continuously interfered with by Defendant J. Curiel. Defendant, J. Curiel,
5 continually discouraged Plaintiff from filing his appeals and exhausting his remedies
6 and took action which interfered with and, interrupted, discouraged, blocked, and
7 generally prevented Plaintiff from exhausting his administrative remedies. On
8 information and belief, defendant J. Curiel and certain DOES understood and/or
9 believed that the PLRA required administrative exhaustion and each of them took
10 steps to prevent exhaustion so as to avoid, illegally, litigation and to cover up the
11 misconduct by his fellow CDC employees and correctional officers. The
12 aforementioned conduct also caused Plaintiff not to be able to complete the
13 exhaustion of his administrative remedies by the time he was released from prison on
14 July 23, 2008. At the time of the filing of this complaint, Plaintiff is and was not a
15 prisoner confined in any jail, prison, or other correctional facility. The
16 aforementioned acts of interference by defendants J. Curiel and certain unknown
17 DOE defendants, and each of them, constituted conduct which violated Plaintiff's due
18 process and equal protection rights.

19 25. Alternatively, the aforementioned acts of defendants, and each of them,
20 constituted conduct which does not involve "prison conditions," but involves a
21 particular incident whereby the defendants engaged in illegal and unlawful conduct.
22 Additionally, requiring any such exhaustion is futile, since this suit does not seek to
23 improve prison conditions as defined under the Prison Litigation Reform Act, and no
24 exhaustion could allow the prison officials to remedy the condition or resolve the
25 dispute during or subsequent to any such process. Further, Plaintiff was released
26 from prison while he was engaging the administrative remedies, but could not longer
27 do so by virtue of his release. As such exhaustion is not required under 42 U.S.C. §
28 1997e(a).

26. By reason of the afore described acts and omissions of defendants, plaintiff was required to retain an attorney to institute, prosecute and render legal assistance to plaintiff in the within action so that he might vindicate the loss and impairment of plaintiff's rights. By reason thereof, plaintiff requests payment by defendants of a reasonable sum for attorney's fees pursuant to 42 U.S.C. Section 1988.

COUNT ONE

**(Against All Defendants and DOES I-X, For Violation of Civil Rights–
Use of Force Constituting Cruel and Unusual Punishment)**

27. Plaintiff hereby incorporates and realleges Paragraphs 1 through 26 hereat as though fully set forth at this place.

28. Plaintiff is informed and believes, and thereon alleges, that all of the acts, as alleged herein above, were done in a conspiracy, either overtly or tacitly, and/or through the individual acts of defendants.

29. By reason of all defendants' conduct, plaintiff was deprived of rights, privileges, and immunities secured to him by the Eighth and Fourteenth Amendments of the Constitution of the United States and the laws enacted thereunder. The Eighth Amendment prohibition of cruel and unusual punishment is applicable to the states and its officers through the Fourteenth Amendment. The unlawful use of force, and fabrication of events amounted to an arbitrary intrusion by defendants, and each of them, into the security of plaintiff's rights, in violation of his constitutionally protected rights and constituted cruel and unusual punishment, and were not authorized by law. The violence inflicted upon plaintiff's person, the restriction of his movements, and the use of force deprived plaintiff of his right to be free from cruel and unusual punishment under the Eighth Amendment as applied to these defendants through the Fourteenth Amendment's right to due process of law.

30. The Defendants knew or should have known when they took the action against this Plaintiff that Plaintiff would have been subjected to the infliction of

unnecessary and wanton pain. The Defendants were deliberately indifferent to Plaintiff's constitutional right to be free of cruel and unusual punishment because they committed the acts alleged herein and intentionally interfered with Plaintiff's right to be free from cruel and unusual punishment. Such acts violated Plaintiff's constitutional right to be free from cruel and unusual punishment, and the Defendants' conduct was the proximate cause of injury and consequent damage to the Plaintiff.

31. The acts of defendants, and each of them, to deprive plaintiff of his right to liberty was in deliberate indifference and conscious disregard to plaintiff's constitutional rights. Therefore, defendants, and each of them, are liable under 42 U.S.C. §1983.

32. The aforementioned acts of defendants, and each of them, were willful, reckless, malicious, oppressive, and with callous indifference to and with reckless disregard to plaintiff's rights, and thus, justify awarding of exemplary and punitive damages in an amount to be ascertained according to proof at the time of trial.

33. By reason of the afore described acts and omissions of defendants, plaintiff was required to retain an attorney to institute, prosecute and render legal assistance to plaintiff in the within action so that he might vindicate the loss and impairment of plaintiff's rights. By reason thereof, plaintiff requests payment by defendants of a reasonable sum for attorney's fees pursuant to 42 U.S.C. Section 1988.

COUNT TWO

(Against All Defendants and DOES I-X,

For Violation of Civil Rights—Abuse of Process and Malicious Prosecution)

34. Plaintiff hereby incorporates and realleges Paragraphs 1 through 33 hereat as though fully set forth at this place.

35. Plaintiff is informed and believes, and thereon alleges, that all of the acts, as alleged herein above, were done in a conspiracy, either overtly or tacitly, and/or through the individual acts of defendants.

1 36. By reason of all defendants' conduct, plaintiff was deprived of rights,
2 privileges, and immunities secured to him by the Eighth and Fourteenth Amendments
3 of the Constitutional of the United States and the laws enacted thereunder. The
4 Eighth Amendment prohibition of cruel and unusual punishment is applicable to the
5 states and its officers through the Fourteenth Amendment. The unlawful and
6 unjustified discipline, malicious prosecution, and fabrication of events amounted to
7 an arbitrary intrusion by defendants, and each of them, into the security of plaintiff's
8 rights, in violation of his constitutionally protected rights and constituted cruel and
9 unusual punishment, and were not authorized by law. The violations inflicted upon
10 plaintiff's person, the restriction of his movements, the unlawful pursuit of criminal
11 and disciplinary charges against him deprived plaintiff of his right to be free from
12 cruel and unusual punishment under the Eighth Amendment as applied to these
13 defendants through the Fourteenth Amendment's right to due process of law.
14 Additionally, the acts alleged herein were independent of any confinement issues
15 related to this Plaintiff, but related to his right to due process of law, as applied to the
16 states under the Fourteenth Amendment and his right not to have the process of the
17 courts, the disciplinary proceedings, or the prosecution of criminal actions against
18 him used in an abusive manner by the defendants to deprive him of his rights under
19 the Eighth, Fourteenth and Fourth Amendments. These are rights which were not
20 abdicated upon his entry into prison.

21 37. The Defendants knew or should have known when they took the action
22 against this Plaintiff that Plaintiff would have been subjected to the infliction of
23 unnecessary and wanton pain. The Defendants were deliberately indifferent to
24 Plaintiff's constitutional right to be free of cruel and unusual punishment because they
25 committed the acts alleged herein and intentionally interfered with Plaintiff's right to
26 be free from cruel and unusual punishment. Such acts violated Plaintiff's
27 constitutional right to be free from cruel and unusual punishment, and the Defendants'
28 conduct was the proximate cause of injury and consequent damage to the Plaintiff.

1 Therefore, defendants, and each of them, are liable under 42 U.S.C. §1983.

2 38. The acts of defendants, and each of them, independent of any Eighth
3 Amendment claim, operated also to deprive plaintiff of his rights to due process of
4 law under the Fourteenth and Fourth Amendments and was done in deliberate
5 indifference and conscious disregard to plaintiff's constitutional rights. Therefore,
6 defendants, and each of them, are liable under 42 U.S.C. §1983.

7 39. The aforementioned acts of defendants, and each of them, were willful,
8 reckless, malicious, oppressive, and with callous indifference to and with reckless
9 disregard to plaintiff's rights, and thus, justify awarding of exemplary and punitive
10 damages in an amount to be ascertained according to proof at the time of trial.

11 40. By reason of the afore described acts and omissions of defendants,
12 plaintiff was required to retain an attorney to institute, prosecute and render legal
13 assistance to plaintiff in the within action so that he might vindicate the loss and
14 impairment of plaintiff's rights. By reason thereof, plaintiff requests payment by
15 defendants of a reasonable sum for attorney's fees pursuant to 42 U.S.C. Section
16 1988.

17 **COUNT THREE**

18 **(Against All Defendants and DOES I-X,**

19 **For Violation of Civil Rights-Deliberate Indifference to Medical Needs)**

20 41. Plaintiff hereby incorporates and realleges Paragraphs 1 through 39
21 hereat as though fully set forth at this place.

22 42. Subsequent to the events alleged herein, the Defendants also denied
23 Plaintiff needed medical treatment by being deliberately indifferent to his serious
24 medical needs after he was beaten. Defendants knew or should have known that
25 Plaintiff had a serious medical need which required appropriate treatment, and that
26 failure to treat such medical need would result in the infliction of unnecessary and
27 wanton pain and/or the exacerbation of other painful medical conditions.

28 43. Defendants were deliberately indifferent to Plaintiff's constitutional right

1 to be free of cruel and unusual punishment because they denied, delayed or
2 intentionally interfered with medical treatment. Such acts violated Plaintiff's
3 constitutional right to be free from cruel and unusual punishment. The Defendants'
4 conduct was the proximate cause of injury and consequent damage to the Plaintiff.

5 44. The prison officials (defendants in this action) committed acts which
6 resulted in the denial, delay and/or intentional interference with the medical treatment
7 needed by Plaintiff and the manner in which the prison physicians and or
8 representatives provided medical care was a violation of Plaintiff's rights as well.
9 The deliberate indifference to serious medical needs existed, in part, when these
10 defendants failed to provide medical care when he knew or should have known that
11 such omission will result in the infliction of unnecessary and wanton pain.

12 45. The aforementioned acts of defendants, and each of them, were willful,
13 reckless, malicious, oppressive, and with callous indifference to and with reckless
14 disregard to plaintiff's rights, and thus, justify awarding of exemplary and punitive
15 damages in an amount to be ascertained according to proof at the time of trial.

16 46. By reason of the afore described acts and omissions of defendants,
17 plaintiff was required to retain an attorney to institute, prosecute and render legal
18 assistance to plaintiff in the within action so that he might vindicate the loss and
19 impairment of plaintiff's rights. By reason thereof, plaintiff requests payment by the
20 defendants and each of them his attorneys' fees and costs as appropriate under 42
21 U.S.C. section 1988 or any other appropriate authority.

22 23 **COUNT FOUR**

24 **(Against All Defendants and DOES I-X,**

25 **For Violation of Civil Rights-Due Process, Equal Protection, and**
26 **Violation of Right to Petition the Government for Redress of Grievances**

27 47. Plaintiff hereby incorporates and realleges Paragraphs 1 through 46
28 hereat as though fully set forth at this place.

1 48. Subsequent to the events alleged herein, the Defendants also denied
2 Plaintiff his due process and equal protection rights by delaying, interfering,
3 discouraging, impeding, and otherwise obstructing Plaintiffs need to exhaust his
4 administrative remedies. Defendants knew or should have known that Plaintiff was
5 required to exhaust his remedies and they took action to interfere with that
6 requirement that he exhaust his remedies. Defendant J. Curiel took the action on
7 behalf of the other defendants as part of a plan to impeded Plaintiff's ability to
8 remedy the wrongs alleged herein that had been done to him in order to prevent
9 Plaintiff from getting proper redress of his grievances. The defense knew that the
10 actions taken would result in a denial of his rights.

11 49. Defendants were deliberately indifferent to Plaintiff's constitutional right
12 to be free of cruel and unusual punishment as detailed herein. Defendants also knew
13 that the because they attempted to and did deny, delay or intentionally interfere and
14 impede Plaintiff's attempts to exhaust his remedies, that this would assist defendants
15 in covering up their illegal activity and protecting themselves from being discovered.
16 Such acts violated Plaintiff's constitutional rights to petition the government for
17 redress, due process, and equal protection. The Defendants' conduct was the
18 proximate cause of injury and consequent damage to the Plaintiff.

19 50. The prison officials (defendants in this action) committed acts which
20 resulted in the denial, delay and/or intentional interference with the Plaintiffs attempts
21 and ultimate success in denying Plaintiff the right to exhaust his remedies before his
22 release from prison. The deliberate indifference to these rights

23 51. The aforementioned acts of defendants, and each of them, were willful,
24 reckless, malicious, oppressive, and with callous indifference to and with reckless
25 disregard to plaintiff's rights, and thus, justify awarding of exemplary and punitive
26 damages in an amount to be ascertained according to proof at the time of trial.

27 52. By reason of the afore described acts and omissions of defendants,
28 plaintiff was required to retain an attorney to institute, prosecute and render legal

1 assistance to plaintiff in the within action so that he might vindicate the loss and
2 impairment of plaintiff's rights. By reason thereof, plaintiff requests payment by the
3 defendants and each of them his attorneys' fees and costs as appropriate under 42
4 U.S.C. section 1988 or any other appropriate authority.

5 WHEREFORE, plaintiff requests judgment as follows against defendants, and
6 each of them:

7 1. That defendants be required to pay plaintiff general damages including
8 pain and suffering and emotional distress, in a sum to be ascertained;

9 2. That defendants be required to pay plaintiff special damages, including
10 medical expenses in a sum to be ascertained;

11 3. That defendants, except where prohibited by the Government Code, be
12 required to pay plaintiff exemplary and punitive damages in a sum to be ascertained;

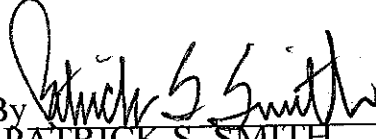
13 4. That defendants be required to pay plaintiff's attorney's fees pursuant to
14 Section 1988 of Title 42 of the United States Code, or any other appropriate and
15 applicable statutes;

16 5. That defendants be required to pay plaintiff the costs of suit herein
17 incurred; and

18 6. That plaintiff have such other and further relief as the court may deem
19 just and proper.

20 DATED: January 2, 2009

BELTRAN BELTRAN SMITH
OPPEL & MACKENZIE, L.L.P.

21
22
23 By 
24 PATRICK S. SMITH
Attorneys for Plaintiff
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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

KEVIN HIGHSMITH,

Plaintiff,

v.

LIDIA MARQUEZ, in her individual capacity; JOSE ARROYO, in her individual capacity; RUDY ESPARZA, in his individual capacity; FRANK GARCIA, in his individual capacity; CHRISTOPHER GEIWITZ, in his individual capacity; SGT. JOE LOPEZ, in his individual capacity; STANDISH BERRY in his individual capacity; CARLOS MANCILLA in his individual capacity; ROBERT PRATT in his individual capacity; J. CURIEL, in his individual capacity, and DOES I through X, inclusive,

Defendants.

CASE NUMBER

CV09-00039 SVW (CTx)

SUMMONS

TO THE ABOVE-NAMED DEFENDANT(S), you are hereby summoned and required to file with this court and serve upon Plaintiff's attorney, whose address is:

Patrick S. Smith, Esq.
BELTRAN BELTRAN SMITH OPPEL & MACKENZIE, LLP
16133 Ventura Blvd., Suite 1145
Encino, California 91436

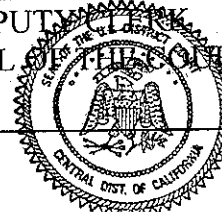
an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

DATED: JAN - 5 2009

CLERK, U. S. DISTRICT COURT

By NATALIE LONGORIA

DEPUTY CLERK
(SEAL OF THE COURT)



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Stephen V. Wilson and the assigned discovery Magistrate Judge is Carolyn Turchin.

The case number on all documents filed with the Court should read as follows:

CV09- 39 SVW (CTx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) KEVIN HIGHSMITH	DEFENDANTS LIDIA MARQUEZ, in her individual capacity; JOSE ARROYO, in her individual capacity; RUDY ESPARZA, in his individual capacity; FRANK GARCIA, in his individual capacity; et al.
(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): Los Angeles	County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):
(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) PATRICK S. SMITH (SBN 120220) BELTRAN BELTRAN SMITH OPPEL & MACKENZIE, L.L.P. 16133 Ventura Blvd., Suite 1145 Encino, California 91436	Attorneys (If Known) Edmund G. Brown, Attorney General of the State of California Mitchell E. Rische, Deputy Attorney General 300 South Spring Street, Suite 1702 Los Angeles, California 90013

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No☒ MONEY DEMANDED IN COMPLAINT: \$ Not yet ascertained**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
42 USC 1983 claim for violation of civil rights**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE - PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☐ No ☒ Yes

If yes, list case number(s): CV 08-04477 PA (SHx)

FOR OFFICE USE ONLY: Case Number: **CV09-00039**

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☐ No ☒ Yes

If yes, list case number(s): CV 08-04477 PA (SHx)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)

- ☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.
 Los Angeles

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).

- ☐ Check here if the U.S. government, its agencies or employees is a named defendant.
 Los Angeles (on information and belief)

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)

- Note: In land condemnation cases, use the location of the tract of land involved.
 Los Angeles

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Date January 2, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))